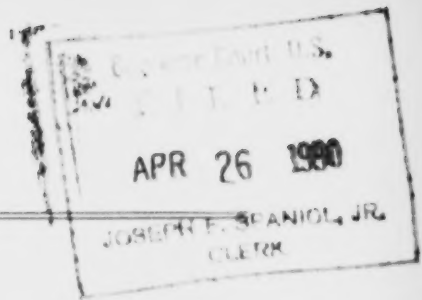


89-1676

No. _____



In The
Supreme Court of the United States
October Term, 1989

—◆—
INTERDICTION OF
BERTHA PATECEK VON SCHNEIDAU

—◆—
On Writ Of Certiorari To The
Louisiana Supreme Court

—◆—
PETITION FOR WRIT OF CERTIORARI

—◆—
ROBERT A. ANDERSON, JR.
ANDERSON, MILLER & RAMIREZ
321 N. Florida Street
P.O. Box 120
Covington, Louisiana 70434
Telephone: (504) 892-2170

*Attorney for Petitioner
Bertha Patecek Von Schneidau*



QUESTION PRESENTED FOR REVIEW

When questions of personal freedom and constitutional issues are involved, should the State Court of Appeals and the State Supreme Court review the evidence presented to ascertain that it meets the requirements of due process under the Fourteenth Amendment of the U.S. Constitution?

LIST OF PARTIES

The parties to the proceedings below were Petitioner Bertha Patecek Von Schneidau and Respondents Phyllis Long, Barbara Stafford, and Frances Mino.

TABLE OF CONTENTS

	Page
Question Presented for Review	i
List of Parties	ii
Table of Contents	iii
Table of Authorities	v
Opinions Below	1
Jurisdiction	2
Constitutional Issue Involved	2
Statement of the Case	2
Reasons Why the Writ Should be Granted	3
I. THE RIGHTS OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION SHOULD BE PROVIDED UNDER THE ARTICLES FOR INTERDICTION IN THE LOUISIANA CIVIL CODE AND THE LOUISIANA CODE FOR CIVIL PROCEDURE	4
II. THIS DEFENDANT SHOULD HAVE BEEN QUESTIONED ON HER TRUE UNDER- STANDING OF PROPERTY VALUES, AND NEGLECT TO DO SO CONSTITUTED RE- VERSIBLE ERROR.....	8
Conclusion	9
 APPENDICES:	
A. Judgment in <i>Interdiction of Bertha Patecek Von Schneidau</i> No. 89-C-2808 (La. Supreme Court, January 26, 1990).....	App. 1

TABLE OF CONTENTS – Continued

Page

- B. Opinion and Judgment in *Interdiction of Bertha Patecek Von Schneidau*, No. CA-88-1472 (First Circuit Court of Appeals, State of Louisiana, September 28, 1989). App. 3
- C. Opinion and Judgment in *Interdiction of Bertha Patecek Von Schneidau*, No. 87-16062 (22nd J.D.C., State of Louisiana, April 11, 1988). App. 5

TABLE OF AUTHORITIES

Page

CASES:

FEDERAL:

<i>Addington v. State of Texas</i> , 441 U.S. 418, 60 L.Ed. 2d 323, 99 S.Ct. 1804 (1979).....	5
<i>Board of Regents v. Roth</i> , 408 U.S. 564, 33 L.Ed. 2d 548, 92 S.Ct. 2701 (1972).....	4
<i>Camara v. Municipal Court of San Francisco</i> , 387 U.S. 528, 18 L.Ed. 2d 930, 87 S.Ct. 1727 (1967).....	5
<i>Frank v. Maryland</i> , 359 U.S. 360, 3 L.Ed. 2d 877, 79 S.Ct. 804, reh. den. 360 U.S. 914, 3 L.Ed. 2d 1263, 79 S.Ct. 1292 (1959)	5
<i>Kelly v. Johnson</i> , 426 U.S. 238, 47 L.Ed. 2d 708, 96 S.Ct. 1440 (1976).....	4

STATE:

<i>In Re Interdiction of Salzer</i> , 482 So. 2d 166 (La. App. 4th Cir. 1986).....	6
<i>Interdiction of Scurto</i> , 177 So. 573 (La. 1937)	8
<i>Interdiction of White</i> , 463 So. 2d 53 (La. App. 3rd Cir., 1985).....	6, 7
<i>J. Cohen Jewelers v. Succession of Jumonville</i> , 506 So. 2d 535 (La. App. 1st Cir., 1987).....	6
<i>Matter of Fabre</i> , 371 So. 2d 1322 (La. 1979)	6
<i>State v. A.C.</i> , 543 So. 2d 133 (La. App. 2nd Cir., 1989).....	4

TABLE OF AUTHORITIES – Continued

Page

STATUTES:

Louisiana Civil Code, Articles 389-4266, 7*Louisiana Code of Civil Procedure*, Articles 4541-4557 ...6, 7

No. _____

In The
Supreme Court of the United States
October Term, 1989

INTERDICTION OF
BERTHA PATECEK VON SCHNEIDAU

On Writ Of Certiorari To The
Louisiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Writ of Certiorari to the Louisiana Supreme Court was denied on January 26, 1990. The denial is attached as Appendix A to the Petition.

The Appeal to the First Circuit Court of Appeals for the State of Louisiana was denied on September 28, 1989. The denial is attached as Appendix B to the Petition.

The Judgment of the Twenty-Second District Court in the Parish of St. Tammany, State of Louisiana, was entered April 11, 1988. A copy of the Reasons for Judgment is reprinted as Appendix C to the Petition.

JURISDICTION

The Judgment of the Louisiana Supreme Court was entered on January 26, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL ISSUE INVOLVED

The Fourteenth Amendment to the U.S. Constitution is involved: "nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Bertha Patecek Von Schneidau, a widow of eighty-three years, is a shy and retiring life-long resident of Covington, Louisiana. She has had some physical problems from time to time, including a loss of hearing, but mentally she is alert and is dismayed at her circumstances.

Her three daughters have had her interdicted, which has taken away all her dignity and personal freedom. She can no longer drive a car, cash a check, or conceivably even carry pocket change. She no longer has the ability to make small and large decisions concerning her person, such as where she may live and what she may do.

Mrs. Von Schneidau is a woman of some wealth, who used to hire a housekeeper and a gardener to keep up the

home she lived in alone. But her wealth is of no consequence to her anymore since she is not allowed the dignity to live how, where, and with whom she wishes.

The evidence presented at the trial court level revolved around her understanding of her holdings, yet those holdings were never offered into evidence nor stipulated. The psychologist who testified admitted that he did not know if her inherent reticence caused her to underestimate her liquid assets to him, a total stranger to their one brief meeting. Nor did that psychologist know if she understood the importance of their meeting and his questions about her wealth and the part they would play in her interdiction hearing.

The judge of that trial court hearing did not question Mrs. Von Schneidau, although he had the authority to put her on the stand himself or to take her into his chambers.

The Court of Appeals denied the appeal from the interdiction as did the Louisiana Supreme Court.

REASONS WHY THE WRIT SHOULD BE GRANTED

The Petition presents a single question: when basic personal freedoms and constitutional issues are involved, should the State Court of Appeals and the State Supreme Court review the evidence to ascertain that it meets the requirements of due process under the Fourteenth Amendment of the U.S. Constitution? The result below was very wrong, because the evidence did not support the decision. Therefore, both courts should have actively investigated to be sure that the concept of due process

was upheld. A case which denies personal freedom to one of our citizens on insufficient evidence should have been remanded. A recent Louisiana case so states: "Even though the lower court's findings are entitled to great weight, an appellate court must, considering the constitutional rights involved, review the evidence presented and strictly require that it meet the high standards enunciated by law." *State v. A.C.*, 543 So. 2d 133, 135 (La. App. 2d Cir. 1989).

I. THE RIGHTS OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION SHOULD BE PROVIDED UNDER THE ARTICLES FOR INTERDICTION IN THE LOUISIANA CIVIL CODE AND THE LOUISIANA CODE FOR CIVIL PROCEDURE.

" 'Liberty' and 'property' are 'broad and majestic terms' which are connected to the whole domain of social and economic facts, and due process protection for deprivations of liberty extends beyond formal constraints." *Board of Regents v. Roth*, 408 U.S. 564, 571-2, 33 L.Ed. 2d 548, 557-8, 92 S.Ct. 2701 (1972), quoting *National Insurance Company v. Tidewater Co.*, 337 U.S. 582, 646, 93 L.Ed. 1556, 1596, 69 S. Ct. 1173 (Frankfurter, J., dissenting). Personal liberty is a basic tenet of our country's foundation, and the recognition of that fact formed the basis of the Fourteenth Amendment of our Constitution and its due process clause. This due process clause has been held to afford not only a procedural guarantee against the deprivation of liberty, but also a protection of substantive aspects of liberty against unconstitutional restrictions by the state. *Kelly v. Johnson*, 425 U.S. 238, 244, 47 L.Ed. 2d

708, 713, 96 S. Ct. 1440 (1976). Just as the states cannot pass statutes violating personal freedoms without just cause and due process, so the "Application of the broad restraints of due process compels inquiry into the nature of the demand being made upon individual freedom in a particular context and the justification of social need on which the demand rests." *Frank v. Maryland*, 359 U.S. 360, 363, 3 L.Ed. 2d 877, 880, 79 S. Ct. 804, reh. den. 360 U.S. 914, 3 L.Ed. 2d 1263, 79 S. Ct. 1292 (1959). The due process clause also overlays other amendments in the Constitution, such as the Fourth Amendment. *Camara v. Municipal Court of San Francisco*, 387 U.S. 528, 18 L.Ed. 2d 930, 87 S. Ct. 1727 (1967).

Basic personal freedoms demand the most stringent criteria of all, and due process guarantees have been traditionally recognized for the confinement of the mentally ill. The U.S. Supreme Court stated in one such case that "the function of legal process is to minimize the risk of erroneous decisions" and that while "At one time or another every person exhibits some abnormal behavior Obviously, such behavior is no basis for compelled treatment and surely none for confinement." *Addington v. State of Texas*, 441 U.S. 418, 426-7, 60 L.Ed. 2d 323, 331, 99 S. Ct. 1804 (1979). The Court also determined in this case that the "clear and convincing" standard of evidence was appropriate for the mentally ill in order to minimize error in such an important proceeding. *Id.*

Interdiction proceedings have traditionally been regarded as a proceeding by the state in its character of *parens patriae*, with its purpose usually twofold: to protect the person from him/her self or from society, and to appoint a guardian in order to preserve the person's

property from waste. Due process of law, however, must be strictly preserved when a person is deprived of his or her constitutional rights of liberty and enjoyment of property.

In Louisiana, the governing statutes are Louisiana Civil Code Articles 389-426 and Louisiana Code of Civil Procedure Articles 4541-4557. Interdiction itself is spoken of in these articles as a "judgment," a word which underlines the harsh effects of such a pronouncement. Because the State of Louisiana has recognized that interdiction is a burdensome remedy with lasting effects, the cases have supported the "clear and convincing" burden of proof. *J. Cohen Jewelers v. Succession of Jummonville*, 506 So. 2d 535 (La. App. 1st Cir. 1987); *In Re Interdiction of Salzer*, 482 So. 2d 166 (La. App. 4th Cir., 1986); *Interdiction of White*, 463 So. 2d 53 (La. App. 3rd Cir., 1985). Also the adversarial position is emphasized in that the person or persons filing the petition must carry the burden of proving to the court that the interdict is incapable of handling himself or his affairs. *Interdiction of White*, *supra*.

The Louisiana Civil Code, Article 393, sets forth the general guidelines of proof of mental incapacity, but this article demonstrates a lack of ascertainable standards for that proof. Instead, the article states merely that it "must be proved to the satisfaction of the judge." Instead, case law has filled out the standards. In the *Matter of Fabre*, 371 So. 2d 1322 (La. 1979), the Louisiana Supreme Court said that all three of the following criteria must be proven for interdiction: (1) incapacity to administer one's estate; (2) inability to care for one's person; (3) an actual necessity for the interdiction. The appellate courts have followed these same guidelines subsequently: *In Re Interdiction of*

Salzer, 482 So. 2d 166 (La. App. 4th Cir. 1986); *Interdiction of White*, 463 So. 2d 53 (La. App. 3rd Cir., 1985). These standards seem adequate on their face to protect the interdict.

However, since proof of mental incapacity under Civil Code Article 393 is only that of the "satisfaction of the judge," it depends upon the conscientiousness in the examination of evidence by that judge. According to the Louisiana Code of Civil Procedure, Article 4547, the judge "may" interrogate the defendant and "may" appoint an expert to examine the defendant. Only when the defendant is outside the state is the judge mandated by "shall" to appoint an expert. The Civil Code Article 393 also states that the judge "may" interrogate or appoint an interrogator for the defendant. Not requiring the judge to appoint at least one expert, and not requiring the judge to question the defendant, either in open court or in chambers, allows the petitioner to present evidence that in some cases may not be addressed by the defendant. The person charged with interdiction is, in many cases, old and frail, and when that condition is combined with deficiencies in hearing, that person may well be reluctant to take the stand in his or her defense. Therefore, interrogation by the judge should become mandatory in such cases.

We suggest that due process guarantees under the Fourteenth Amendment of the Constitution require that the judge interrogate the proposed interdict in person before passing judgment. Since the sentence of interdiction restricts personal freedoms so drastically, as many safeguards as possible should be allowed by the Louisiana Civil Code and the Louisiana Code of Civil Procedure

in order to prevent mistakes in judgment. A personal interrogation is not an unreasonable requirement for such a harsh remedy.

II. THIS DEFENDANT WAS NOT QUESTIONED ON HER TRUE UNDERSTANDING OF PROPERTY VALUES, AND FAILURE TO DO SO IS REVERSIBLE ERROR.

In the instant case, injustice was done since the evidence presented did not support the judgment. That judgment has resulted in the loss of personal and financial freedoms for one elderly lady, and it has also resulted in personal humiliation and private depression. Since the judgment has many of the same results as involuntary commitment or criminal incarceration, it should be subject to the same close scrutiny and review as are those proceedings.

Similar facts existed in the *Interdiction of Scurto*, 177 So. 573 (La. 1937), at which time the Louisiana Supreme Court did review the fact that the interdict refused to answer questions and found that refusal acceptable. As in that case, this case also turned on the question of property holdings and the cognizance of Mrs. Von Schneidau as to those holdings. There was never any evidence that the defendant even knew the purpose of probing and personal questions about her wealth. She is a private, shy, and reticent person who does not like to talk about her wealth, and certainly not with strangers. The trial judge could have easily found with a few questions directed to Mrs. Von Schneidau whether or not she understood her property.

Also, the Louisiana First Circuit Court of Appeals did not examine to see if the three criteria of interdiction had been met. If it had done such an examination, it would have found that they had not. Mrs. Von Schneidau lived alone before, and is capable of once more living alone and managing her own affairs. There is absolutely no necessity for this interdiction.

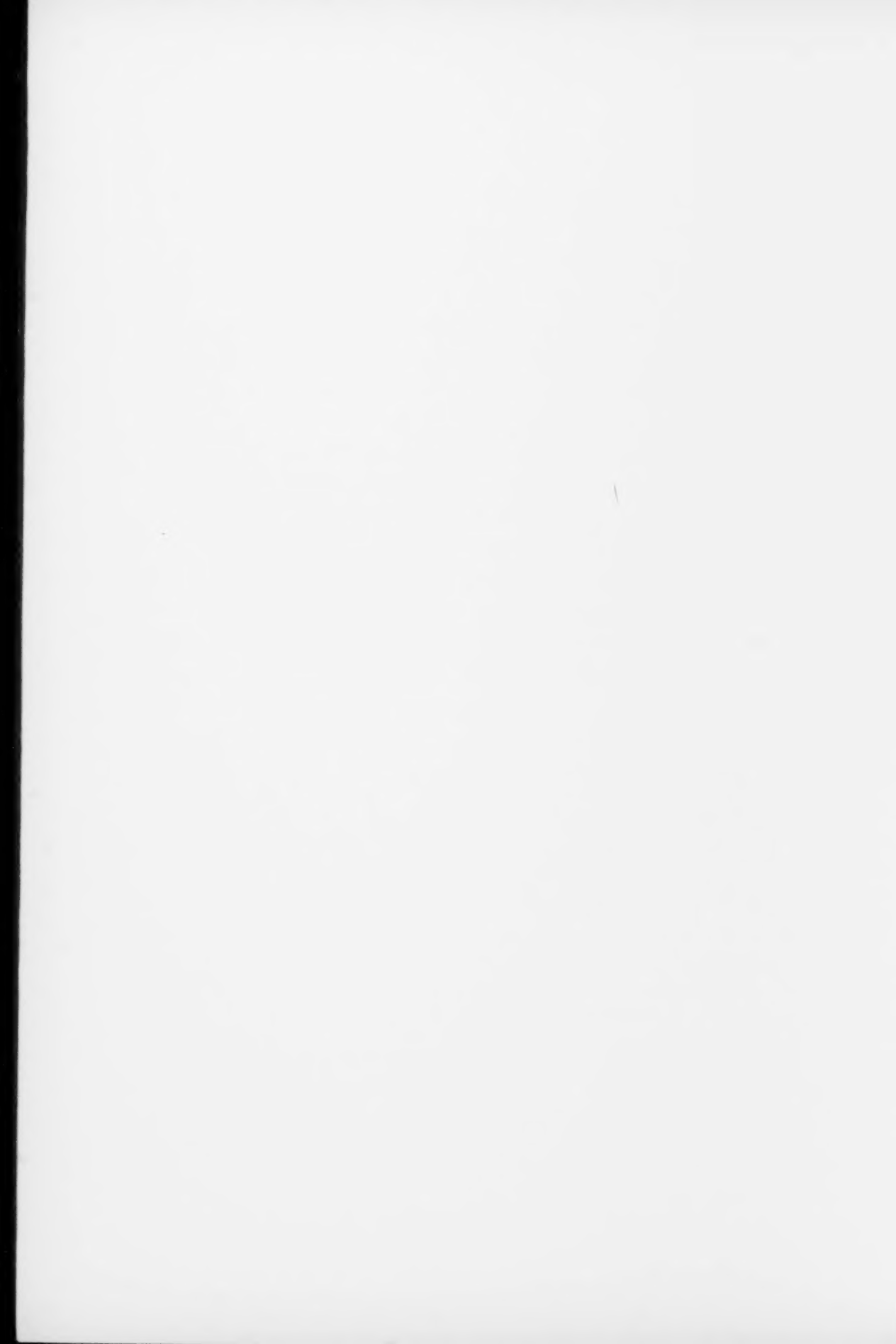
CONCLUSION

This case presents an opportunity for the Court to exercise its supervisory jurisdiction in order to provide safeguards for elderly people all over our nation. Persons who are simply old and hard of hearing should not be interdicted without all the procedures of due process having been met. An appeal of an interdiction should result in an examination of the evidence by the State Appellate Court in order to insure that the Fourteenth Amendment has been upheld. The writ should be granted.

Respectfully submitted,

/s/ Robert A. Anderson, Jr.
ROBERT A. ANDERSON, JR.
ANDERSON, MILLER & RAMIREZ
321 N. Florida Street
P. O. Box 120
Covington, Louisiana 70434
(504) 892-2170

Attorney for Petitioner
Bertha Patecek Von Schneidau



App. 1

APPENDIX A

THE SUPREME COURT OF
THE STATE OF LOUISIANA

INTERDICTION OF BERTHA PATECEK
VON SCHNEIDAU

NO. 89-C-2808
(Filed Jan. 29, 1990)

IN RE: Von Schneidau, Bertha P. Intd.; – Plaintiff(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, First Circuit, Number CA88 1472; Parish of St. Tammany 22nd Judicial District Court Div. "D" Number 87-16062

January 26, 1990

Denied.

JCW
JAD
PFC
WFM
HTL
LFC

DENNIS, J., would grant and remand the case to the court of appeal for a full opinion.

Supreme Court of Louisiana
January 26, 1990

App. 2

/s/ John T. Olivier
Deputy Clerk of Court
For the Court

App. 3

APPENDIX B

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT
Post Office Box 4408
Baton Rouge, Louisiana 70821

DOCKET NO.: CA/88/1472

DATE: SEP 28 1989

INTERDICTION OF BERTHA PATECEK
VON SCHNEIDAU
VERSUS

TO: Marti Tessier
John Miller
Robert Anders, Jr.

NOTICE OF JUDGMENT

You are hereby served with a copy of the opinion in the above entitled case.

Your attention is invited to Rule 2-18 (Rehearing) of the Uniform Rules of the Courts of Appeals, effective July 1, 1982.

CLERK OF COURT

I hereby certify that this opinion and notice of judgment were mailed to the trial judge, the clerk of the trial court, all appeal counsel of record, and all parties not represented by counsel this date.

/s/ Karen West
STANLEY P. LEMOINE,
CLERK
COURT OF APPEAL,
FIRST CIRCUIT

App. 4

AMENDED

TIME DELAY FOR REHEARING, C.C.P. ART. 2166;
C.Cr.P ART. 922; Act No. 451, EFFECTIVE AUGUST 30,
1983.

FEE FOR REHEARING, R.S. 13:352, AS AMENDED, EF-
FECTIVE AUGUST 30, 1986.

NOT DESIGNATED FOR PUBLICATION

INTERDICTION OF BERTHA
PATECEK VON SCHNEIDAU

STATE OF
LOUISIANA
COURT OF
APPEAL FIRST
CIRCUIT
NUMBER CA/
88/1472

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL
DISTRICT COURT, PARISH OF ST. TAMMANY, LOUISI-
ANA (#87-16062); HONORABLE JOHN W. GREENE,
JUDGE PRESIDING.

BEFORE: CARTER, SAVOIE AND ALFORD, JJ.

SEP 28 1989

PER CURIAM.

After a thorough review and evaluation of the record
we are convinced the facts found and the reasons
assigned by the trial court are correct. Accordingly, we
adopt the reasons of the trial court as our own and we
affirm at appellant's costs.

AFFIRMED.

APPENDIX C

INTERDICTION	NUMBER 87-16062
OF	22ND JUDICIAL
BERTHA PATECEK VON	DISTRICT COURT
SCHNEIDAU	PARISH OF
FILED: APRIL 11, 1988	ST. TAMMANY
	STATE OF
	LOUISIANA
	/s/ Pearl Garrett
	<u>DEPUTY CLERK</u>

REASONS FOR JUDGMENT

Petitioners, the three children of Bertha Von Schneidau, filed this proceeding to interdict their mother. The record supports and this Court finds that defendant is incapable of handling her affairs and must be interdicted. Louisiana Revised Civil Code, Articles 389 and 422.

Since mental infirmities vary greatly in nature and degree, each interdiction must depend upon its own particular facts. Interdiction is a very harsh remedy and therefore should be pronounced only where the proof is clear and conclusive. In Re: Adams, 209 So. 2d 363 (La. App. 4th Cir., 1968). In this proceeding plaintiffs have the burden of establishing the incapacity of defendant to care for herself and her property. In Re: Ohanna, 88 So. 2d 665 (1956).

Defendant, age 80, tends to forget to take medication and doctor's appointments, is hard of hearing and becomes confused about current happenings. Her daughter, petitioner Phyllis Long, stayed with her from October, 1986 until several months ago when she was evicted from

App. 6

defendant's house either by defendant or more probably, members of defendant's family other than her children. Testimony further establishes that the defendant could not understand why her daughter Phyllis left her house, did not recall events surrounding her daughter's eviction and did not know why guards were placed at her house.

She has forgotten to cash checks received by her, paid premiums on a health insurance policy but made no claims for medical expenses and generally was not very aware of her fairly extensive financial holdings. She had a grossly undervalued estimation of her assets, a lot of them liquid assets. By stipulation it is established that defendant's movable property, such as bank accounts, Treasury Bills, certificates of deposit and special bonds issued by Citizens Bank and Trust Company of Covington, is valued at around \$500,000.

Defendant seems to be a very passive individual, easily led by others. This Court is of the opinion from the record that defendant might be led astray if she were not in capable hands, although this Court does not infer that defendant has been in less than capable hands.

This Court will receive, at the proper time, an application to appoint a curator and undercurator. Louisiana Revised Civil Code, Articles 404 and 406. In the meantime this Court appoints the defendant's daughter, Phyllis J. Long, as the provisional curator, upon her complying with the law required to be appointed provisional curator. Louisiana Revised Civil Code, Article 394; Louisiana Code of Civil Procedure, Article 4549.

App. 7

Court costs in this matter are to be paid out of the estate of defendant. Louisiana Revised Civil Code, Article 397.

Covington, Louisiana this 11th day of April, 1988.

/s/ John W. Greene
JOHN W. GREENE, Judge
Division "D"
